



January 13, 2016

SENATE BILL No. 255

DIGEST OF SB 255 (Updated January 11, 2016 2:47 pm - DI 55)

Citations Affected: IC 13-11; IC 13-23; IC 35-52.

Synopsis: Underground petroleum storage tanks. Provides for the underground petroleum storage tank excess liability trust fund to be referred to as the "ELTF". Eliminates a provision stating that fees and penalties paid in connection with underground petroleum storage tanks are a source of funds for the ELTF. (Under IC 13-23-6-2 and IC 13-23-12-4, those fees and penalties are deposited in the underground petroleum storage tank trust fund, not in the ELTF.) Repeals IC 13-23-7-9, a provision under which knowingly or intentionally making a material misstatement in connection with an application for financial assistance from the ELTF is a Level 6 felony. (IC 13-23-9-6, a nearly identical provision, is not repealed.) Eliminates the authority of the department of revenue to impose a lien on the property of an underground storage tank owner for failure to pay annual registration fees. Eliminates certain conditions for the payment of claims from the ELTF and limits on the amounts that can be paid from the ELTF under certain circumstances, and provides instead that the administrator of the ELTF shall pay claims that are: (1) for costs related to "eligible releases"; (2) submitted by an "eligible party"; and (3) submitted in accordance with certain requirements. Provides that the administrator of the ELTF: (1) shall pay claims according to a certain priority payment system if the balance in the ELTF drops below \$25,000,000; and (2) shall cease paying claims if the balance in the ELTF becomes insufficient to pay ELTF claims and necessary personnel and administrative expenses. Prohibits the administrator of the ELTF from

(Continued next page)

Effective: July 1, 2016.

Charbonneau

January 7, 2016, read first time and referred to Committee on Environmental Affairs.
January 12, 2016, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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Digest Continued

paying: (1) more than \$2,000,000 from the ELTF per eligible release; or (2) more than \$10,000,000 from the ELTF per fiscal year. Provides that the total amount otherwise available from the ELTF in connection with an eligible release shall be reduced by a "deductible amount" of \$15,000 and, if applicable, the sum of: (1) all annual registration fees for underground storage tanks (USTs) located at the site of the eligible release that were due in 1991 or later and not paid in the year they were due; and (2) an additional \$1,000 for each UST annual registration fee not paid in the year it was due. Revises provisions concerning the procedure for submitting and paying claims for payment from the ELTF.



January 13, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 255

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-11-2-25.7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 25.7. "Claimant", as
3 used in **this chapter**, IC 13-23-8, and IC 13-23-9, refers to a person
4 that ~~submits a claim under IC 13-23-8-1.~~ **makes an ELTF claim.**
- 5 SECTION 2. IC 13-11-2-62.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2016]: **Sec. 62.5. "Eligible party", as used in**
8 **IC 13-23, means any of the following:**
- 9 (1) **An owner, as defined in IC 13-11-2-150.**
10 (2) **An operator, as defined in IC 13-11-2-148(d) and**
11 **IC 13-11-2-148(e).**
12 (3) **A former owner or operator of a UST.**
13 (4) **A transferee of property upon which a UST is located.**
14 (5) **A transferee of property upon which a UST was located**
15 **but from which the UST has been removed.**

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1 SECTION 3. IC 13-11-2-62.7 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2016]: **Sec. 62.7. "Eligible release", as used**
4 **in IC 13-23, means a release of petroleum that meets all of the**
5 **following criteria:**

6 (1) The release is from a UST that was registered with the
7 department before the date of the ELTF claim.

8 (2) The release is reported to the department not later than
9 thirty (30) days after the date on which the claimant
10 discovered the release.

11 (3) An initial site characterization of the facility on which the
12 release occurred is submitted to the department as required
13 by rules adopted by the environmental rules board.

14 (4) The release from the UST is from the tank or dispensing
15 components of the UST, not including the nozzle or hose
16 connecting the nozzle to the pump.

17 SECTION 4. IC 13-11-2-63.5 IS ADDED TO THE INDIANA
18 CODE AS A NEW SECTION TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2016]: **Sec. 63.5. "ELTF", as used in this**
20 **chapter and IC 13-23, refers to the underground petroleum storage**
21 **tank excess liability trust fund established by IC 13-23-7-1.**

22 SECTION 5. IC 13-11-2-63.6 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2016]: **Sec. 63.6. "ELTF claim", as used in**
25 **this chapter and IC 13-23, means any claim for payment from the**
26 **ELTF.**

27 SECTION 6. IC 13-11-2-63.7 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2016]: **Sec. 63.7. "ELTF indemnity claim",**
30 **as used in IC 13-23, means any ELTF claim for the indemnification**
31 **of a third party.**

32 SECTION 7. IC 13-11-2-73 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 73. "Excess liability**
34 **trust fund", for purposes of IC 13-23, refers to the underground**
35 **petroleum storage tank excess liability trust fund (or ELTF)**
36 **established by IC 13-23-7-1.**

37 SECTION 8. IC 13-11-2-87, AS AMENDED BY P.L.57-2009,
38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2016]: **Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers**
40 **to the environmental management special fund.**

41 (b) "Fund", for purposes of IC 13-15-10, refers to the waste facility
42 operator trust fund.



(c) "Fund", for purposes of IC 13-15-11, refers to the environmental management permit operation fund.

(d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust fund.

(e) "Fund", for purposes of IC 13-17-8, refers to the Title V operating permit program trust fund.

(f) "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

(g) "Fund", for purposes of IC 13-18-13, refers to the wastewater revolving loan fund established by IC 13-18-13-2.

(h) "Fund", for purposes of IC 13-18-21, refers to the drinking water revolving loan fund established by IC 13-18-21-2. The term does not include the supplemental fund established by IC 13-18-21-22.

(i) "Fund", for purposes of IC 13-19-5, refers to the environmental remediation revolving loan fund established by IC 13-19-5-2.

(j) "Fund", for purposes of IC 13-20-4, refers to the municipal waste transportation fund.

(k) "Fund", for purposes of IC 13-20-13, refers to the waste tire management fund.

(l) "Fund", for purposes of IC 13-20-22, refers to the state solid waste management fund.

(m) "Fund", for purposes of IC 13-21-7, refers to the waste management district bond fund.

(n) "Fund", for purposes of IC 13-21-13-2, refers to a district solid waste management fund.

(o) "Fund", for purposes of IC 13-23-6, refers to the underground petroleum storage tank trust fund.

(p) "Fund", for purposes of IC 13-23-7 **and IC 13-23-8**, refers to the underground petroleum storage tank excess liability trust fund **(or ELTF)**.

(q) "Fund", for purposes of IC 13-25-4, refers to the hazardous substances response trust fund.

(r) "Fund", for purposes of IC 13-25-5, refers to the voluntary remediation fund.

(s) "Fund", for purposes of IC 13-28-2, refers to the voluntary compliance fund.

SECTION 9. IC 13-11-2-241, AS AMENDED BY P.L.113-2014, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 241. (a) "Underground storage tank" **(or UST)**, for purposes of ~~section 161~~ of this chapter and IC 13-23, means one (1) tank or a combination of tanks:

(1) that is used to contain an accumulation of regulated substances; and



- 1 (2) the volume of which, including the volume of the underground
- 2 connected pipes described in subsection (b), is at least ten percent
- 3 (10%) beneath the surface of the ground.
- 4 (b) If:
- 5 (1) a single tank; or
- 6 (2) a combination of tanks;
- 7 constitutes an underground storage tank under subsection (a), any
- 8 underground pipes that are connected to the single tank or combination
- 9 of tanks are also part of the underground storage tank.
- 10 (c) The term defined in subsection (a) includes a single tank:
- 11 (1) that meets the definition set forth in subsection (a); and
- 12 (2) in which there are separate compartments.
- 13 (d) The term does not include any of the following:
- 14 (1) A farm or residential tank with a capacity of not more than one
- 15 thousand one hundred (1,100) gallons that is used for storing
- 16 motor fuel for noncommercial purposes.
- 17 (2) A tank used for storing heating oil for consumptive use on the
- 18 premises on which the tank is stored.
- 19 (3) A septic tank.
- 20 (4) A pipeline facility, including gathering lines, that:
- 21 (A) is regulated under the Natural Gas Pipeline Safety Act of
- 22 1968 (49 U.S.C. 1671 et seq.);
- 23 (B) is regulated under the Hazardous Liquid Pipeline Safety
- 24 Act of 1979 (49 U.S.C. 60101 et seq.); or
- 25 (C) is an intrastate pipeline facility regulated under state laws
- 26 comparable to the laws identified in clauses (A) through (B).
- 27 (5) A surface impoundment, pit, pond, or lagoon.
- 28 (6) A stormwater or wastewater collection system.
- 29 (7) A flow-through process tank.
- 30 (8) A liquid trap or associated gathering lines directly related to
- 31 oil or gas production and gathering operations.
- 32 (9) A storage tank situated in an underground area such as:
- 33 (A) a basement;
- 34 (B) a cellar;
- 35 (C) a mineworking;
- 36 (D) a drift;
- 37 (E) a shaft; or
- 38 (F) a tunnel;
- 39 if the storage tank is situated upon or above the surface of the
- 40 floor.
- 41 (10) Any other tank exempted by a rule adopted by the board in
- 42 accordance with regulations adopted by the Administrator of the



United States Environmental Protection Agency.

(11) A pipe connected to a tank described in subdivisions (1) through (10).

SECTION 10. IC 13-11-2-244.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 244.3. "UST", as used in this chapter and IC 13-23, refers to an underground storage tank, as defined in section 241 of this chapter.**

SECTION 11. IC 13-23-5-1, AS AMENDED BY P.L.221-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Subject to section 2 of this chapter, and except as provided in subsection (b), an underground storage tank, whether of single or double wall construction, may not be installed before the effective date of the rules adopted under IC 13-23-1-2 for the purpose of storing regulated substances unless:

(1) the tank will prevent releases due to corrosion or structural failure for the operational life of the tank;

(2) the tank is:

(A) cathodically protected against corrosion;

(B) constructed of noncorrosive material;

(C) steel clad with a noncorrosive material; or

(D) designed to prevent the release or threatened release of any stored substance;

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored; and

(4) after July 1, 2007, all newly installed or replaced piping connected to the tank meets the secondary containment requirements adopted by the board.

(b) An underground storage tank system that contains alcohol blended fuels composed of greater than fifteen percent (15%) alcohol is a petroleum UST system (as defined in 329 IAC 9-1-36 as in effect January 1, 2007) and may be installed during the period referred to in subsection (a) if the system is otherwise in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks and ancillary equipment, including dispensing equipment, used in the storing or dispensing of alcohol blended fuels for purposes of

(1) IC 13-23-8-3(1)(A); and

(2) all other provisions of this article.

(c) Owners and operators of underground storage tank systems that store, carry, or dispense alcohol blended fuels composed of greater than



1 fifteen percent (15%) alcohol that comply with subsection (b) are
 2 considered to meet the standards of:

- 3 (1) compatibility under subsection (a)(3); and
 4 (2) compliance for purposes of
 5 ~~(A) IC 13-23-8-3; and~~
 6 ~~(B)~~ all other provisions of this article.

7 SECTION 12. IC 13-23-7-1, AS AMENDED BY P.L.105-2011,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2016]: Sec. 1. (a) ~~Subject to subsection (b);~~ The underground
 10 petroleum storage tank excess liability trust fund **(or ELTF)** is
 11 established for the following purposes:

- 12 (1) Assisting owners and operators of underground petroleum
 13 storage tanks to establish evidence of financial responsibility as
 14 required under IC 13-23-4.
 15 (2) Providing a source of money to satisfy liabilities ~~incurred by~~
 16 ~~owners and operators of underground petroleum storage tanks~~
 17 ~~under IC 13-23-13-8~~ for corrective action.
 18 (3) Providing a source of money for the indemnification of third
 19 parties under IC 13-23-9-3.

20 (4) Providing a source of money to pay for the expenses of the
 21 department incurred in:

22 ~~(A) paying and administering claims against the trust fund~~
 23 ~~Money may be provided under this subdivision only ELTF~~ for
 24 those job activities and expenses that consist exclusively of
 25 administering the ~~excess liability trust fund; ELTF;~~

26 ~~(5) Providing a source of money to pay for the expenses of the~~
 27 ~~department incurred in (B) inspecting underground storage~~
 28 ~~tanks; and~~

29 ~~(6) Providing a source of money to pay expenses incurred by~~
 30 ~~the department in (C) establishing and implementing an online~~
 31 ~~underground storage tank operator training program (A) on an~~
 32 ~~Internet web site; and (B) that complies with the requirements~~
 33 ~~of the federal Energy Policy Act of 2005.~~

34 (b) The ~~combined amount of payments expenses~~ described in
 35 subsection (a)(4) ~~(a)(5); and (a)(6) that are paid~~ from the ~~underground~~
 36 ~~petroleum storage tank excess liability trust fund ELTF~~ in a state fiscal
 37 year may not exceed eleven percent (11%) of the fund income in the
 38 immediately preceding state fiscal year.

39 **(c) The ELTF is designated as a trust fund.**

40 SECTION 13. IC 13-23-7-2 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. Sources of money for
 42 the ~~trust fund ELTF~~ are the following:



- 1 ~~(1) Fees and penalties paid under IC 13-23-12.~~
 2 ~~(2) (1) Appropriations from the general assembly.~~
 3 ~~(3) (2) Gifts and donations intended for deposit in the fund.~~
 4 ~~(4) (3) Inspection fees paid under IC 16-44-2.~~
 5 ~~(5) (4) Bond revenue under IC 4-4-11.2-7(a)(1).~~
 6 ~~(6) (5) Any other money authorized to be deposited in or~~
 7 ~~appropriated to the trust fund.~~

8 SECTION 14. IC 13-23-7-3 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. The commissioner
 10 or the commissioner's designee shall administer the ~~trust fund~~ **ELTF**.

11 SECTION 15. IC 13-23-7-4 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. The expenses of
 13 administering the provisions of this article that are funded by the ~~trust~~
 14 ~~fund~~ **ELTF**, including:

- 15 (1) IC 13-23-8;
 16 (2) IC 13-23-9;
 17 (3) IC 13-23-11; and
 18 (4) IC 13-23-12;

19 shall be paid from money in the ~~fund~~ **ELTF**.

20 SECTION 16. IC 13-23-7-5 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. The treasurer of state
 22 shall invest the money in the ~~trust fund~~ **ELTF** not currently needed to
 23 meet the obligations of the ~~fund~~ **ELTF** in the same manner as other
 24 public money may be invested. Interest that accrues from these
 25 investments shall be deposited in the ~~fund~~ **ELTF**. At least one (1) time
 26 each year, the treasurer of state shall provide the financial assurance
 27 board a report detailing the investments made under this section.

28 SECTION 17. IC 13-23-7-6 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. Money in the ~~trust~~
 30 ~~fund~~ **ELTF** at the end of a state fiscal year does not revert to the state
 31 general fund.

32 SECTION 18. IC 13-23-7-7, AS AMENDED BY P.L.181-2015,
 33 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2016]: Sec. 7. The state board of accounts shall audit the
 35 ~~excess liability trust fund~~ **ELTF**.

36 SECTION 19. IC 13-23-7-8 IS REPEALED [EFFECTIVE JULY 1,
 37 2016]. ~~Sec. 8. On July 1, 1996, the underground petroleum storage tank~~
 38 ~~excess liability fund established by section 1 of this chapter is renamed~~
 39 ~~as the underground petroleum storage tank excess liability trust fund.~~
 40 ~~The petroleum storage tank excess liability trust fund shall be~~
 41 ~~considered a trust fund.~~

42 SECTION 20. IC 13-23-7-9 IS REPEALED [EFFECTIVE JULY 1,



2016]. Sec. 9: A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for financial assistance from the fund commits a Level 6 felony.

SECTION 21. IC 13-23-7-10 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 10: (a) The department of revenue may impose a lien on the property of an owner or operator, if the owner or operator fails to pay fees that are due under IC 13-23-12-1 according to the provisions in IC 6-8.1-8-2. The lien may secure the payment to the state of an amount equal to the amount of the fees that are due.

(b) If the department of revenue fails to impose a lien on the property described in subsection (a), no penalties or interest may be collected on the tax under IC 6-8.1-8-2.

SECTION 22. IC 13-23-8-1 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 1: The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

(1) The payment of the costs allowed under IC 13-23-9-2, excluding:

(A) liabilities to third parties; and

(B) the costs of repairing or replacing an underground storage tank;

arising out of releases of petroleum.

(2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:

(A) to third parties under IC 13-23-9-3; or

(B) for reasonable attorney's fees incurred in defense of a third party liability claim.

SECTION 23. IC 13-23-8-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 2: Except as provided in section 6 of this chapter, payments under section 1 of this chapter may not exceed two million dollars (\$2,000,000) per occurrence for which claims are made under this chapter.

SECTION 24. IC 13-23-8-3 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 3: For the purposes of section 2 of this chapter, the following amounts shall be used:

(1) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is not in compliance with rules adopted by the board concerning technical and safety requirements relating to the



physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements; and
 (B) is in compliance on a date required under the requirements described under section 4 of this chapter at the time a release was discovered;

the amount is thirty-five thousand dollars (\$35,000).

(2) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is not a double walled underground petroleum storage tank; and

(C) has piping that does not have secondary containment;
 the amount is thirty thousand dollars (\$30,000).

(3) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is not a double walled underground petroleum storage tank; and

(C) has piping that has secondary containment;
 the amount is twenty-five thousand dollars (\$25,000).

(4) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is a double walled underground petroleum storage tank; and

(C) has piping that does not have secondary containment;
 the amount is twenty-five thousand dollars (\$25,000).

(5) If the underground petroleum storage tank that was involved in the occurrence for which claims are made:



(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is a double walled underground petroleum storage tank; and

(C) has piping that has secondary containment;

the amount is twenty thousand dollars (\$20,000)-

SECTION 25. IC 13-23-8-4, AS AMENDED BY P.L.244-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) Except as provided under subsection (b); and subject to section 4.5 of this chapter, an owner or operator may receive money from the excess liability trust fund under section 4 of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

(1) The owner or operator has complied with the following:

(A) This article or IC 13-7-20 (before its repeal)-

(B) Rules adopted under this article or IC 13-7-20 (before its repeal);

A release from an underground petroleum storage tank may not prevent an owner or operator from establishing compliance with this subdivision to receive money from the excess liability fund:

(2) The owner or operator has paid all registration fees that are required under rules adopted under IC 13-23-8-4.5-

(3) The owner or operator has provided the commissioner with evidence of payment of the amount of liability the owner or operator is required to pay under section 2 of this chapter-

(4) A corrective action plan is approved by the commissioner or deemed approved under this subdivision: The corrective action plan for sites with a release from an underground petroleum storage tank that impacts soil or groundwater; or both; is automatically deemed approved only as long as:

(A) the plan conforms with:

(i) 329 IAC 9-4 and 329 IAC 9-5; and

(ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual; including the department's guidance on remediation and closure standards; and

(B) the soil and groundwater contamination is confined to the owner's or operator's property-

If the corrective action plan fails to satisfy any of the requirements



of clause (A) or (B); the plan is automatically deemed disapproved. If a corrective action plan is disapproved, the claimant may supplement the plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the department's standards in clause (A), the department's standards control. For purposes of this subdivision, if there is a conflict between compliance with the corrective action plan and the board's rules, the board's rules control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

The administrator shall pay ELTF claims that are:

- (1) for costs related to eligible releases;**
- (2) submitted by eligible parties; and**
- (3) submitted in accordance with IC 13-23-8 and IC 13-23-9.**

(b) An owner, operator, or transferee of property under subsection (e) is eligible to receive money from the fund before the owner, operator, or transferee has a corrective action plan approved or deemed approved if:

(1) the work for which payment is sought under IC 13-23-9-2 was an initial response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with 329 IAC 9-5; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;

whichever is later.

(c) The amount of money an owner, operator, or transferee of property under subsection (e) is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

(d) (b) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that the right to receive payment of an ELTF claim to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if:



(1) the transferor of the property was eligible to receive money under this section with respect to the property;

(2) the transferee acquired ownership or operation of an underground petroleum storage tank as a result of a bona fide, good faith transaction; negotiated at arm's length; between parties under separate ownership; and

(3) the transferee pays all applicable tank fees under IC 13-23-12-1, including past due fees and interest for each tank, not more than thirty (30) days after receiving notice of the indebtedness.

For purposes of subdivision (3), past due fees include fees, interest, and penalties assessed by the department of revenue.

SECTION 26. IC 13-23-8-4.5 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 4.5: The financial assurance board shall adopt rules under IC 4-22-2 to do the following:

(1) Establish standards, procedures, and penalties for submitting or resubmitting a claim under section 1 of this chapter when the owner or operator has failed to:

(A) register an underground petroleum storage tank from which a release has occurred; or

(B) pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due.

(2) Determine eligibility for new owners or operators that acquire ownership or operation of the underground petroleum storage tank as a result of:

(A) a bona fide, good faith transaction, negotiated at arm's length; between parties under separate ownership and control;

(B) a foreclosure or a deed transferred in lieu of a foreclosure;

(C) the exercise of the person's lien rights; or

(D) an inheritance.

SECTION 27. IC 13-23-8-5 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 5: The financial assurance board shall adopt rules under IC 4-22-2 to define the manner in which the priority order of liability claims and loan guaranties is established. The rules must give priority to liability claims associated with releases from underground storage tanks that pose an immediate and significant threat to the environment.

SECTION 28. IC 13-23-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) If the balance in the ELTF drops below twenty-five million dollars (\$25,000,000), the administrator shall pay claims according to the priority payment system established by rules adopted by the financial assurance board under IC 13-23-11-7(a)(1)(D).



(a) (b) If the balance in the ~~excess liability trust fund~~ ELTF is insufficient to pay:

- (1) ~~ELTF claims; under section 1 of this chapter; and~~
- (2) necessary personnel and administrative expenses associated with the ~~excess liability trust fund; and ELTF;~~
- (3) ~~the transfer repayment specified in IC 13-23-15-3 before its expiration and repeat;~~

the ~~department administrator of the ELTF~~ shall cease paying claims, and claimants may not use the ELTF to satisfy any financial responsibility requirements.

(b) The department shall then notify each claimant that:

- (1) the department may not pay the claim; and
- (2) the claimant may not use the excess liability trust fund to satisfy any financial assurance requirements under federal law.

SECTION 29. IC 13-23-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) The department, with respect to payment of claims, ~~under section 1 of this chapter;~~ may not discriminate against any claimant. However, subject to this chapter, a claimant does not have an enforceable right to the payment of ~~a an~~ ELTF claim. ~~under this chapter.~~

(b) This chapter does not create any obligation on the part of the state other than as specifically provided in this article.

SECTION 30. IC 13-23-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) ~~An owner or operator of:~~

- (1) not more than one hundred (100) underground petroleum storage tanks may not receive more than two million dollars (\$2,000,000) from the excess liability trust fund during a year; and
- (2) more than one hundred (100) underground storage tanks may not receive more than three million dollars (\$3,000,000) from the excess liability trust fund during a year.

The administrator of the ELTF:

- (1) shall not pay more than two million dollars (\$2,000,000) from the ELTF per eligible release; and
- (2) shall not pay more than ten million dollars (\$10,000,000) from the ELTF per fiscal year.

(b) After a claimant has submitted two (2) or more ELTF claims for a total of at least ten million dollars (\$10,000,000), the claimant is ineligible to submit any other ELTF claim during that fiscal year. Any additional ELTF claim submitted by a claimant described in this subsection during the fiscal year shall not be paid



1 in that fiscal year or in any succeeding fiscal year.

2 ~~(b)~~ (c) If the right to receive money from the fund under this chapter
3 is assigned as described in section ~~4(d)~~ 4(c) of this chapter, the
4 combined amount of money received by the assignor and the assignee
5 from the excess liability trust fund during a year may not exceed
6 payments made to one (1) or more assignees shall be considered
7 payments to the assignor for purposes of the limits established in
8 subsection (a).

9 SECTION 31. IC 13-23-9-1 IS REPEALED [EFFECTIVE JULY 1,
10 2016]. ~~Sec. 1. The administrator of the excess liability trust fund shall~~
11 ~~process, approve, and deny requests made for payments from the~~
12 ~~excess liability trust fund under sections 2 and 3 of this chapter.~~

13 SECTION 32. IC 13-23-9-1.3 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2016]: Sec. 1.3. (a) The total amount
16 otherwise available from the ELTF in connection with an eligible
17 release shall be reduced by:

18 (1) a deductible amount of fifteen thousand dollars (\$15,000);
19 and

20 (2) if applicable, an additional amount under subsection (b).

21 (b) The additional amount referred to in subsection (a)(2) is the
22 sum of:

23 (1) all annual registration fees due under IC 13-23-12-1 for
24 USTs located at the facility from which the release occurred
25 that:

26 (A) were due in 1991 or a later year; and

27 (B) were not paid in the year the fees were originally due;
28 plus

29 (2) an additional amount of one thousand dollars (\$1,000) for
30 each annual registration fee imposed by IC 13-23-12-1 on a
31 UST located at the facility from which the release occurred
32 that:

33 (A) was due in 1991 or a later year; and

34 (B) was not paid in the year the fee was originally due.

35 SECTION 33. IC 13-23-9-1.5 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2016]: Sec. 1.5. (a) The administrator may
38 pay ELTF claims only for costs that:

39 (1) are reasonable and cost effective; and

40 (2) result from the following:

41 (A) Work performed for site characterization.

42 (B) Development and implementation of a corrective action



plan that:

(i) is approved by the commissioner under rules adopted by the environmental rules board; and

(ii) has not been suspended.

(C) Work performed as part of an emergency response necessary to abate an immediate threat of harm to human health, property, or the environment.

(D) Third party indemnification claims submitted in accordance with section 3 of this chapter.

(E) Reasonable attorney's fees incurred in defense of third party claims.

(F) Releases that occurred on or after April 1, 1988.

(b) The administrator may also pay ELTF claims for costs not described in subsection (a) if allowed under rules adopted by the financial assurance board.

SECTION 34. IC 13-23-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) ~~To receive money from the excess liability trust fund under IC 13-23-8-1(1), a claimant must:~~

(1) submit a corrective action plan to the administrator of the excess liability trust fund for the administrator's approval; and

(2) submit a copy of a work receipt for work that has been performed.

ELTF claims must be submitted in accordance with rules adopted by the financial assurance board under IC 13-23-11-7(a)(1)(B).

(b) If after receiving a corrective action plan and a work receipt under subsection (a), the administrator determines that:

(1) the corrective action plan may be approved and that the work that has been performed is consistent with the approved corrective action plan;

(2) the work or part of the work that has been performed is reasonable and cost effective;

(3) the work that has been performed concerns the elimination or mitigation of a release of petroleum from an underground storage tank including:

(A) release investigation;

(B) mitigation of fire and safety hazards;

(C) tank removal;

(D) soil remediation; or

(E) ground water remediation and monitoring; and

(4) the claimant is in compliance with the requirements of this article and the rules adopted under this article;



1 the administrator shall approve the request for money to be paid from
2 the excess liability trust fund for work that has been performed:

3 (c) The administrator shall develop criteria for determining the cost
4 effectiveness of corrective action. Although not required for payment
5 from the excess liability trust fund, a claimant may seek pre-approval
6 from the administrator stating that the work to be performed is
7 reasonable and cost effective.

8 (d) The administrator shall notify the claimant of an approval or a
9 denial of a request made under subsection (b) not later than sixty (60)
10 days after receiving the request. Except as provided in subsection (f);
11 the administrator **denies an ELTF claim, the administrator** shall
12 **notify provide** the claimant **with a written explanation** of all reasons
13 for a **the denial or partial denial of reimbursement**.

14 (e) (c) The administrator shall forward a copy of a claim
15 **approved under this section to the auditor of state** not later more
16 than seven (7) days after a request is approved by the administrator
17 under subsection (b) for the reimbursement of costs for corrective
18 action; the administrator shall forward a copy of a request approved
19 under this section to the auditor of state: **approving the claim**.

20 (f) (d) Not later more than thirty (30) days after receiving a copy of
21 an approved request **ELTF claim** under this section; subsection (c),
22 the auditor of state shall pay **the ELTF claim** to the claimant that
23 submitted the approved work receipt the approved amount from money
24 available in the excess liability trust fund: **ELTF**.

25 (g) If a reason the administrator denies a request made under
26 subsection (b) is for failure to meet the requirements of subsection
27 (b)(1); the administrator shall notify the claimant in writing not later
28 than sixty (60) days after receiving the request. The claimant has thirty
29 (30) days from the receipt of the denial to notify the administrator of
30 the claimant's intention to appeal the denial. If the claimant does not
31 notify the administrator of an intention to appeal in the time provided;
32 further review of the application is not required. If an intention to
33 appeal is submitted within the time provided; the administrator has
34 thirty (30) days after the receipt of the notice of the intention to appeal
35 to provide the claimant with all additional reasons for the denial or
36 partial denial of the request or to specify that all reasons have been
37 provided. The claimant has thirty (30) days after receiving notification
38 from the administrator of all additional reasons for the denial or partial
39 denial or notice specifying that all reasons have been provided to file
40 a petition for review of the denial or partial denial.

41 SECTION 35. IC 13-23-9-2.2 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS

SB 255—LS 6898/DI 55



[EFFECTIVE JULY 1, 2016]: **Sec. 2.2. (a) The commissioner shall approve or deny a corrective action plan according to section 1.5(a)(2)(B) of this chapter not more than ninety (90) days after receiving the plan.**

(b) If the commissioner does not approve or deny a corrective action plan within the period allowed under subsection (a), the administrator shall pay from the ELTF the costs incurred by the claimant in developing the corrective action plan.

(c) If:

(1) a corrective action plan is submitted under section 1.5(a)(2)(B) of this chapter;

(2) the commissioner denies the corrective action plan but allows the claimant to amend and resubmit the corrective action plan; and

(3) the commissioner then approves the corrective action plan because of the amendments;

the administrator shall pay from the ELTF the costs incurred by the claimant in amending and resubmitting the corrective action plan.

SECTION 36. IC 13-23-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 3. (a) To receive money from the excess liability trust fund under IC 13-23-8-1(2), payment of an ELTF indemnity claim, a claimant must:**

(1) submit to the administrator a claim, consisting of a request for indemnification of a third party, containing any information required by the administrator; and

(2) forward a copy of the request under subdivision (1) claim to the attorney general for the attorney general's approval.

(b) The attorney general shall approve a request submitted an ELTF indemnity claim forwarded under subsection (a) (a)(2) if the attorney general determines that there is:

(1) a legally enforceable and final judgment against the claimant caused by a release of petroleum that was not entered as a result of:

(A) fraud;

(B) negligence; or

(C) an inadequate defense on the part of the attorney of the claimant; or

(2) a reasonable settlement between the claimant and the third party.

(c) If the attorney general approves a request an ELTF indemnity claim under subsection (b), the administrator shall approve the request



1 **pay the claim** if the claimant is in compliance with the requirements
2 of this article and the rules adopted under this article.

3 (d) The attorney general shall approve or deny ~~a request submitted~~
4 **an ELTF indemnity claim** under subsection ~~(a)~~ **(b)** not later than sixty
5 (60) days after ~~the attorney general receives~~ **receiving** the request.

6 (e) Not ~~later~~ **more** than seven (7) days after ~~the attorney general has~~
7 **approved a request approving an ELTF indemnity claim** under this
8 section, the attorney general shall forward a copy of the ~~approved~~
9 **request attorney general's notice of approval** to the auditor of state.

10 (f) Not ~~later~~ **more** than thirty (30) days after receiving an ~~approved~~
11 **request a notice of approval** under ~~this section; subsection (e),~~ the
12 auditor of state shall pay to the claimant ~~that made the request~~ the
13 approved amount from money available in the ~~excess liability trust~~
14 **fund: ELTF.**

15 (g) If the attorney general denies ~~a request submitted~~ **an ELTF**
16 **indemnity claim** under this section, the attorney general shall notify
17 the claimant ~~that made the request and the administrator~~ of the denial
18 not later than ten (10) days after ~~denying the request has been denied:~~
19 **ELTF indemnity claim.**

20 SECTION 37. IC 13-23-9-4 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. If the administrator
22 denies ~~a request made~~ **an ELTF claim** under ~~section 2 or 3~~ of this
23 chapter, the ~~owner or operator who made the request~~ **claimant** may
24 appeal the denial under IC 4-21.5 to the office of environmental
25 adjudication under IC 4-21.5-7.

26 SECTION 38. IC 13-23-9-5 IS REPEALED [EFFECTIVE JULY 1,
27 2016]. ~~Sec. 5: If the amount of money in the excess liability trust fund~~
28 ~~is not sufficient to meet approved claims made against the excess~~
29 ~~liability trust fund:~~

30 ~~(1) the state; and~~

31 ~~(2) the excess liability trust fund;~~

32 ~~are not liable for the claims:~~

33 SECTION 39. IC 13-23-9-6, AS AMENDED BY P.L.158-2013,
34 SECTION 193, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2016]: Sec. 6. A person who, with intent to
36 defraud, knowingly or intentionally makes a material misstatement in
37 connection with a request for payment from the ~~excess liability trust~~
38 **fund ELTF** commits a Level 6 felony.

39 SECTION 40. IC 13-23-11-7, AS AMENDED BY P.L.113-2014,
40 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2016]: Sec. 7. (a) The board shall do the following:

42 (1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to **do**



the following:

(A) Carry out the duties of the board under this article.

(B) Establish standards and procedures under which:

(i) eligible parties may submit ELTF claims; and

(ii) the administrator of the ELTF may pay ELTF claims.

(C) Establish standards for determining the reasonableness and cost effectiveness of corrective action for purposes of reimbursement from the ELTF under IC 13-23-9-1.5(a)(1).

(D) Establish standards for priorities in the payment of ELTF claims, including a priority for claims associated with releases from USTs that pose an immediate and significant threat to the environment.

(2) Take testimony and receive a written report at every meeting of the board from the commissioner or the commissioner's designee regarding the financial condition and operation of the ~~excess liability trust fund~~ ELTF, including:

(A) a detailed breakdown of contractual and administrative expenses the department is claiming from the ~~excess liability trust fund~~ ELTF under IC 13-23-7-1(a)(4); and

(B) a claims statistics report consisting of:

(i) the status and ~~value~~ **amounts** of ~~each claim~~ **claims** submitted to the ~~fund~~ ELTF; and

(ii) ELTF claims payments made. ~~under IC 13-23-8-1.~~

~~The~~ Testimony **shall be taken** and a written report **shall be received** under this subdivision ~~shall be provided~~ at every meeting of the board. However, the testimony and written report are not required more than one (1) time during any thirty (30) day period.

(3) Consult with the department on administration of the ~~underground petroleum storage tank excess liability trust fund~~ established by IC 13-23-7-1 ELTF in developing uniform policies and procedures for revenue collection and claims administration of the ~~fund~~ ELTF.

(b) The department shall consult with the board on administration of the ~~underground petroleum storage tank excess liability trust fund~~ ELTF. The consultation must include evaluation of alternative means of administering the ~~fund~~ ELTF in a cost effective and efficient manner.

(c) At each meeting of the board, the department shall provide the board with a written report on the financial condition and operation of the ~~underground petroleum storage tank trust fund~~ established under



~~IC 13-23-6-1. ELTF.~~

SECTION 41. IC 13-23-12-1, AS AMENDED BY P.L.6-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Each year, if an underground storage tank has not been closed before January 1 of the year under:

(1) rules adopted under IC 13-23-1-2; or

(2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;

the owner of the underground storage tank shall pay to the department an annual registration fee.

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars (\$90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.

(c) If an underground storage tank consists of a single tank in which there are separate compartments, a separate fee shall be paid under subsection (b) for each compartment within the single tank.

(d) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid under subsection (b) for each compartment within each tank in the combination of tanks.

~~(e) For purposes of determining eligibility for payment of part of the liability of owners and operators of underground petroleum storage tanks under IC 13-23-8, only fees paid in 1991 or later shall be considered.~~

~~(f)~~ (e) The following apply to tanks that contain separate compartments and that were in use before July 1, 2014:

(1) For the period preceding July 1, 2014, the payment of a single annual fee of ninety dollars (\$90) for a tank containing separate compartments shall be deemed to satisfy the requirements of subsection (b).

(2) The department shall not be required to pay any refunds to a tank owner that paid a separate fee under subsection (b) for each compartment within a tank before July 1, 2014.

SECTION 42. IC 35-52-13-9 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 9: ~~IC 13-23-7-9 defines a crime concerning underground storage tanks.~~



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 255, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 5, line 38, delete "of:" and insert "of".
- Page 5, line 39, strike "(1)".
- Page 5, line 39, delete "rules concerning technical and safety".
- Page 5, delete line 40.
- Page 5, line 41, delete "underground petroleum storage tanks;"
- Page 5, line 41, strike "and".
- Page 5, line 42, strike "(2)".
- Page 6, line 6, delete "of:" and insert "of".
- Page 6, line 7, strike "(A)".
- Page 6, line 7, delete "rules concerning technical and safety".
- Page 6, delete line 8.
- Page 6, line 9, delete "underground petroleum storage tanks;"
- Page 6, line 9, strike "and".
- Page 6, line 10, strike "(B)".
- Page 11, line 38, delete "(b)".
- Page 11, line 40, delete "The".
- Page 11, delete lines 41 through 42.
- Page 12, line 1, delete "(c)" and insert "(b)".
- Page 13, line 16, delete "assurance" and insert "**responsibility**".
- Page 13, line 39, delete "ELTF shall not pay any person or entity:" and insert "**ELTF:**".
- Page 13, line 40, after "(1)" insert "**shall not pay**".
- Page 13, line 41, delete "or" and insert "**and**".
- Page 13, line 42, after "(2)" insert "**shall not pay**".
- Page 14, delete lines 15 through 28.
- Page 17, delete lines 25 through 32, begin a new paragraph and insert:

"(b) If the commissioner does not approve or deny a corrective action plan within the period allowed under subsection (a), the administrator shall pay from the ELTF the costs incurred by the claimant in developing the corrective action plan."
- Page 18, line 30, strike "later" and insert "**more**".



Page 18, line 34, strike "later" and insert "**more**".

Page 19, delete lines 38 through 42.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 255 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 6, Nays 0.

